

United States
Department of the Interior
Bureau of Land Management

Miles City Field Office

Quest Renewal ROW
MTM-57753

Categorical Exclusion (CX)
DOI-BLM-MT-C020-2013-0140-CX

For Further Information Please Contact:

Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301
406-233-2800

BLM



UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

CATEGORICAL EXCLUSION REVIEW AND APPROVAL

A. Background

BLM Office: Miles City Field Office

Serial No.: MTM-57753

NEPA Number (if applicable): DOI-BLM-MT-C020-2013-0140-CX

Proposed Action Title/Type:

QWest Renewal of Right-of-way MTM-57753

Location of Proposed Action:

T. 22 N., R. 59 E., Section 22: NE¼NE¼, Richland County, Montana, PMM

Description of Proposed Action: The proposed action is to renew a right-of-way which was originally issued to Mountain States Telephone and Telegraph Company on March 17, 1983. It was assigned to Qwest Corporation on December 20, 1991. This right-of-way is located on one parcel of Federal land and it was authorized for a buried telephone line. It was issued under the authority of the Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761). The right-of-way was subject to all applicable provisions of the regulations at the time it was issued. The holder has requested that the right-of-way be renewed for a 30-year term and be renewable. The holder has paid the required processing fee of \$410 for a Category 2 FLPMA right-of-way. QWest would be subject to cost recovery fees and rental fees. The right-of-way is 15 feet wide, 1,066 feet long, and consists of 0.37 acres, more or less. This right-of-way has been inspected and is being used for the purpose for which it was authorized.

The standard stipulations for cultural and/or paleontological resource protection and toxic substances would be made a part of the right-of-way grant, as would the standard stipulations that all activities associated with the ROW and weed control would be conducted within the authorized limits of the right-of-way. There would be no construction or routine maintenance when the soils are too wet. The holder would be required to contact entities or persons who hold an authorized right on, adjacent or affected lands. The right-of-way would be subject to mitigations set forth in the application and plan of development. The right-of-way would be renewed pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and be subject to the terms and conditions in 43 CFR 2800 and the attached stipulations. The right-of-way would be monitored for use and before future renewal or termination.

B. Land Use Plan Conformance

Land Use Plan Name: Big Dry R. A. RMP/EIS Record of Decision (ROD)

Date Approved/Amended: Approved on April of 1996

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): This proposed action is in conformance with the Big Dry Resource Area RMP/EIS ROD which was approved in April of 1996. On page 10 of the Record of Decision, it states that "In areas where rights-of-way are allowed, stipulations from the BLM Manual 2800 will be used to protect resource values." The proposed action has been reviewed for conformance with this plan and its terms and conditions as required by 43 CFR 1610.5

C. Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9E (9) for renewals and assignments of leases, permits or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and, as documented below, none of the extraordinary circumstances described in 516 DM2 apply.

Extraordinary Circumstances		
The project would:		
1. Have significant impacts on public health or safety.		
Yes	No X	Rationale: <i>The project would not have significant impacts on public health and safety as it is for the renewal of a right-of-way for a buried telephone line. DDL 4/23/2013</i>
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		
Yes	No X	Rationale: <i>Impacts would not be significant as the proposed action is to renew the existing right-of-way. DDL 4/23/2013</i>
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102 (2) (E)].		
Yes	No X	Rationale: <i>No controversial environmental effects or unresolved conflicts. DDL 4/23/2013</i>

4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
Yes	No X	Rationale: <i>No highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. DDL 4/23/2013</i>
5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.		
Yes	No X	Rationale: <i>This action is not connected to another action that would require further environmental analysis nor will it set a precedent for future actions that would normally require environmental analysis. DDL 4/22/2013</i>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
Yes	No X	Rationale: <i>There would be no cumulative impacts from this project. See CFR 1508.7. DDL 4/23/2013</i>
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		
Yes	No X	<p>Rationale: <i>Confirm that cultural surveys have been completed; the appropriate data bases have been reviewed; and appropriate concurrence from SHPO and tribes have been received indicating that significant impacts are not expected.</i></p> <p>BLM rand Montana SHPO Cultural Resource Records show that the proposed ROW renewal was part of a 40 acre block inventory for a proposed oil well. No cultural or paleontological resources were recorded during the inventory (See BLM Cultural Resources Report MT-020-13-167). The proposed action meets the inventory exemption for ROW renewals where no historic properties would be affected and there has been previous total disturbance. The proposed project would have no effect to historic properties.</p> <p>DM 04/26/13</p>
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		
Yes	No X	<p>Rationale: <i>Threatened or endangered habitat and/or species exist in the proposed ROW renewal area.</i></p> <p><i>Although the proposed ROW renewal area is within the identified Whooping Crane (E) Migration Corridor, this is an existing telephone line thus there would be no effect to them or the associated habitats.</i></p> <p>KU 5/9/13</p>

9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		
Yes	No X	Rationale: <i>No laws are being violated by this action. DDL 4/23/2013</i>
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
Yes	No X	Rationale: <i>Does not have a disproportionately high and adverse effect on low income or minority populations. DDL 4/23/2013</i>
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		
Yes	No X	Rationale: <i>Consultation with tribes regarding Indian sacred sites must take place</i> The proposed action is to renew an existing ROW. This would not limit access or use of public lands. No sites are identified in the ROW on Federal lands. NO areas of concern are identified in the Ethnographic Overview of Southeast Montana for this area. DM 04/26/13
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).		
Yes	No X	Rationale: <i>The proposed action will not contribute to the introduction or spread of noxious weeds as an existing right-of-way is being renewed. DDL 4/23/2013</i>



Signature of Environmental Coordinator

5/21/2013

Date



Signature of Supervisory Land Use Specialist

6/18/2013

Date

Decision Record for Categorical Exclusion
Renewal of Right-of-way MTM-57753 Qwest Corporation
DOI-BLM-MT-020-2013-0140-CX

Decision: I have made the decision to renew the existing right-of-way to Qwest Corporation for a buried telephone line located on the following Federal land (Public Domain):

T. 22 N., R. 59 E., Section 22: NE $\frac{1}{4}$ NE $\frac{1}{4}$, Richland County, Montana, PMM.

The standard stipulations for cultural and/or paleontological resource protection, toxic substances stipulation, weed control stipulation, no construction or maintenance when too wet, coordinate with other parties, as well as other stipulations will be made part of the right-of-way renewal grant. The right-of-way will be renewed for 30 years and be pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and be subject to all applicable provisions of the regulations at 43 CFR 2800 and the attached stipulations. The applicant will be subject to cost recovery fees and rental fees. The right-of-way will be monitored for use and before future renewal or termination.

Rationale for Decision: The proposed action meets the criteria for a categorical exclusion under 516 DM 11.9E (9) for renewals and assignments of leases, permits or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations and none of the exceptions in 516 DM 2 apply. Further the actions are in conformance with the Big Dry RMP/EIS ROD, which was approved in April of 1996.

I considered the proposed action and associated stipulations which will be included in the right-of-way renewal grant and are attached below. There is no potential for significant impacts. Use of this CX is appropriate and I have decided to implement this action.

D: Signature



Signature of Authorizing Official

6/18/2013

Date

Name: Todd D. Yeager

Title: Field Manager

Contact Person

For additional information concerning this CX review and decision, contact:
Dalice Landers, Realty Specialist (406-233-2836)
BLM – Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

Administrative Review or Appeal Opportunities

A BLM decision to issue a ROW may be appealed under regulations in 43 CFR 2801.10 in accordance with part 4 of 43 CFR. A BLM decision affecting a ROW application carries the “full force and effect” of the decision. Under full force and effect the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. The decision to issue a ROW in full force and effect requires information on petitions for stay to be included with the decision notification. The decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and information on BLM Form 1842-1. If an appeal is taken, the notice of appeal must be filed in the Miles City Field Office at 111 Garryowen Road, Miles City, Montana 59301 within 30 days from receipt of the decision issuing the decision. The appellant has the burden of showing that the decision appealed from is in error.

If a petition (request) is filed pursuant to regulation 43 CFR 2881.10 for a stay (suspension) of the effectiveness of the decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the Miles City Field Office. If a stay is requested, the requester has the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Stipulations

1. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
2. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).
3. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of four (4) inches deep, the soil shall be deemed too wet to adequately support construction equipment.
4. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
5. The holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
6. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land

under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.

7. This grant is issued subject to the holder's compliance with the mitigations set forth in the application/plan of development.

8. The holder shall coordinate with the existing right-of-way holders, grazing lessees/permittees, and other parties who hold an authorized right on adjacent and affected lands.

9. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.